IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

Crl.MC.No. 817 of 2007()

CC.653/2001 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

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PETITIONER:

K. VENKITESH, S/O. K.A. KUPPUSWAMI,
HOUSE NO.1523, EAST HILL APARTMENT,
WEST HILL.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

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1. CB CID, KOZHIKODE.

2. STATE, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 817 of 2007

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Dated this the 21st day of March, 2007

O R D E R

The petitioner is the 15th accused in a prosecution, inter alia, for offences punishable under Sections 468, 420 and 471 I.P.C. One charge sheet has been filed by the Investigating Officer in respect of different offences committed during the period from 1996 to 1998. Cognizance was taken long back and the case is seen numbered as C.C.No.653 of 2001.

2. Before commencement of trial, it would appear that it was realised that crucial error has been committed by the Investigating Officer in having filed one common report in respect of all the offences contrary to the provisions relating to joinder of charges. When this was realised, it would appear that the Prosecutor made a request under Section 173(8) Cr.P.C. on behalf of the State to permit further investigation to be conducted, so that proper charges complying with the provisions relating to joinder of charges can be filed by the Investigating Officer. The said application was opposed. But the learned Magistrate, by the impugned order, granted the said request.

3. The petitioner claims to be aggrieved by the impugned order. He has come to this Court with a prayer that powers under Section 482 Cr.P.C. may be invoked to set aside the impugned order, copy of which is produced as Annex.I.

4. I must alertly remind myself of the nature, quality and contours of the jurisdiction under Section 482 Cr.P.C. It is an extra ordinary inherent jurisdiction. It is to be invoked in the interests of justice to prevent failure/miscarriage of justice. A reading of the order makes it clear that opportunity was granted for further investigation solely for the purpose of curing the defects in the final report filed. An omni bus final report was filed covering about 17 instances during the period from 1996 to 1998. The learned Magistrate evidently wanted separate charge sheets to be filed, which would comply with the provisions relating to joinder of charges. This course adopted by the learned Magistrate cannot by any stretch of imagination be described as one leading to failure/miscarriage of justice. Of course, it may have been possible for the learned Magistrate himself to frame separate charges on the basis of the consolidated common final report filed by the Investigating Officer. But the fact that the Investigator was given such an opportunity cannot at any rate persuade this court to invoke

the powers under Section 482 Cr.P.C. Separate final reports filed will certainly help the court to focus its attention and ensure that witnesses, who are not necessary for one set of charges, are not unnecessarily included in the list of witnesses to be examined.

5. In this view of the matter, though the course followed by the learned Magistrate could have been avoided, I find absolutely no gross error vitiating the order and justifying the invocation of the powers under Section 482 Cr.P.C.

6. This Crl.M.C. is dismissed. But I direct the learned Magistrate to approach this old case with a sense of expedition and ensure that the report is filed by the Investigator as expeditiously as possible.

(R. BASANT)
Judge

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